IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Aayub Ahmed Patel,	)	
And All Others Similarly Situated	)	
Plaintiffs,	)	
	)	**CIVIL ACTION**
v.	)	**FILE NO. ________________**
	)	
Ehaan & King Business, Inc. d/b/a Jack's	)	
Discount Liquor d/b/a Stop N Save Liquor;	)	
Rahim Karim Momin; and Abdul Ali,	)	**JURY DEMANDED**
Defendants.	)	
	)	

PLAINTIFFS' ORIGINAL COMPLAINT

NOW COME PLAINTIFF, AAYUB AHMED PATEL, and all others similarly situated, and complain of Defendants Ehaan & King Business, Inc. d/b/a Jack's Discount Liquor d/b/a Stop N Save Liquor; Rahim Karim Momin and Abdul Ali (hereinafter collectively referred to as "Defendants") and for cause of action would show the Court as follows:

I.
INTRODUCTION

1. This is a collective action suit to recover unpaid overtime wages brought under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*

2. This action seeks equitable relief, compensatory and liquidated damages, attorney's fees, taxable costs of court, and post-judgment interest for Defendants' willful failure to pay overtime pursuant to 29 U.S.C. § 216(b) for Plaintiff Aayub Ahmed Patel, and all others similarly situated, in the course of their employment with the Defendants.

3. Aayub Ahmed Patel and all others similarly situated demand a jury trial on all issues that may be tried to a jury.

4. This action is authorized and instituted pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq*. and state common law.

II.
JURISDICTION AND VENUE

5. Plaintiff Patel, on behalf of himself and the Plaintiff class, brings this action to recover unpaid overtime compensation from the Defendants pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq*.

6. This Court has jurisdiction of these claims pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1367.

7. This Court has supplemental jurisdiction over Texas state law. The state law claims alleged herein are so related in this action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

8. Venue is proper in the Southern District of Texas under 28 U.S.C. § 1441(a).

III.
PARTIES

9. Plaintiff, **Aayub Ahmed Patel**, is a resident of Baytown, Harris County, Texas.

10. **Members of the "Plaintiff Class"** are current and former non-exempt hourly and salaried employees of Defendants who work, or have worked, at one or more of Defendants' businesses engaged in the sale of alcohol, including liquor stores.

11. Defendant **Ehaan & King Business, Inc. d/b/a Jack's Discount Liquor d/b/a Stop N Save Liquor** is a validly existing Texas corporation that may be served with summons and complaint by serving its registered agent, Rahim Karim Momin, at 6263 McNeil Drive, Apartment 328, Austin, Texas 78729, or at any other address where he may be found. This Defendant is engaged in interstate commerce or the production of goods for interstate commerce.

12. Defendant **Rahim Karim Momin** is an individual who may be served with summons and complaint at his residence located at 6263 McNeil Drive, Apartment 328, Austin, Texas 78729, or at any other address where he may be found. This Defendant is engaged in interstate commerce or the production of goods for interstate commerce. Furthermore, he has acted, directly or indirectly, in the interest of an employer with respect to named Plaintiff and members of the Plaintiff Class.

13. Defendant **Abdul Ali** is an individual who may be served with summons and complaint at his place of business located at Savoy Food Market, 11246 S. Wilcrest Drive, Suite 145, Houston, Texas 77099, or at any other address where he may be found. This Defendant is engaged in interstate commerce or the production of goods for interstate commerce. Furthermore, he has acted, directly or indirectly, in the interest of an employer with respect to named Plaintiff and members of the Plaintiff Class.

14. Whenever in this complaint it is alleged that any or all of the above named Defendants committed any act or omission, it is meant that Defendants' officers, directors, vice-principals, agents, servants, or employees committed such act or omission and that at the time such act or omission was committed, it was done with the full authorization, ratification or approval of each Defendant or was done in the routine normal course and scope of employment of Defendants' officers, directors, vice-principals, agents, servants, or employees.

15. At all material times, Defendants have been employers within the meaning of 3(d) of the FLSA. 29 U.S.C. § 203(d).

16. At all material times, Defendants have collectively been an enterprise within the meaning of 3(r) of the FLSA. 29 U.S.C. § 203(r).

17. At all material times, Defendants have been an enterprise in commerce or in the

production of goods for commerce within the meaning of 3(s)(1) of the FLSA because they have had employees engaged in interstate commerce. 29 U.S.C. § 203(s)(1).

18. At all material times, Plaintiff was an individual employee who was engaged in interstate commerce or in the production of goods for interstate commerce as required by 29 U.S.C. §§ 206-207.

19. Defendants are a common enterprise and "joint employer" as defined by 29 U.S.C. § 203(r).

20. Defendant Rahim Karim Momin is a principal shareholder / member / owner of the named legal entity Defendant.

21. Defendant Rahim Karim Momin is one of the directors, or the sole director, of the named corporate entity Defendant.

22. Defendant Rahim Karim Momin is one of the officers, or the sole officer, of the named corporate entity Defendant.

23. Defendant Rahim Karim Momin is involved in the day-to-day business operations of the named legal entity Defendant.

24. Defendant Rahim Karim Momin is involved in setting company policies of the named legal entity Defendant.

25. With respect to the named legal entity Defendant, Rahim Karim Momin has the authority to hire and/or fire employees of such Defendant, including managers of that Defendant.

26. With respect to the named legal entity Defendant, Rahim Karim Momin has the authority to direct and supervise the work of employees of such Defendant, including managers of that Defendant.

27. With respect to the named legal entity Defendant, Rahim Karim Momin has the

signing authority on the legal entity's checking accounts, including payroll accounts.

28. With respect to the named legal entity Defendant, Rahim Karim Momin has the authority to make decisions regarding employee compensation, including the compensation of managers of such Defendant.

29. With respect to the named legal entity Defendant, Rahim Karim Momin has the authority to make decisions regarding marketing such Defendant's businesses.

30. With respect to the named legal entity Defendant, Rahim Karim Momin has the authority to make decisions regarding capital expenditures.

31. Defendant Abdul Ali is a principal shareholder / member / owner of the named legal entity Defendant.

32. Defendant Abdul Ali is one of the directors, or the sole director, of the named corporate entity Defendant.

33. Defendant Abdul Ali is one of the officers, or the sole officer, of the named corporate entity Defendant.

34. Defendant Abdul Ali is involved in the day-to-day business operations of the named legal entity Defendant.

35. Defendant Abdul Ali is involved in setting company policies of the named legal entity Defendant.

36. With respect to the named legal entity Defendant, Abdul Ali has the authority to hire and/or fire employees of such Defendant, including managers of that Defendant.

37. With respect to the named legal entity Defendant, Abdul Ali has the authority to direct and supervise the work of employees of such Defendant, including managers of that Defendant.

38. With respect to the named legal entity Defendant, Abdul Ali has the signing authority on the legal entity's checking accounts, including payroll accounts.

39. With respect to the named legal entity Defendant, Abdul Ali has the authority to make decisions regarding employee compensation, including the compensation of managers of such Defendant.

40. With respect to the named legal entity Defendant, Abdul Ali has the authority to make decisions regarding marketing such Defendant's businesses.

41. With respect to the named legal entity Defendant, Abdul Ali has the authority to make decisions regarding capital expenditures.

42. With respect to the named legal entity Defendant, Abdul Ali has invested in and has an ownership interest in such Defendant and / or in the businesses owned and operated by such legal entity Defendant.

43. The Defendants are Plaintiff's "employer" within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

IV.
CLASS ALLEGATIONS

44. Plaintiff Aayub Ahmed Patel files this case as an "opt-in" collective action, as is specifically allowed by 29 U.S.C. § 216(b).

45. The class that Plaintiff Aayub Ahmed Patel seeks to represent may be described as follows:

> **All current and former employees of each of the above named Defendants who worked as store clerks or other types of hourly or salaried workers 1) who worked at any business located in Texas that was owned, operated and / or acquired by the Defendants during the class period, and 2) who claims that he or she was either (a) misclassified as exempt from overtime compensation or (b) not misclassified but did not receive all of**

his or her overtime pay, and seeks payment for such overtime pay.

46. Plaintiff Patel seeks to represent only those members of the above-described group who, after appropriate notice of their ability to opt into this action, have provided consent in writing to be represented by Plaintiff's counsel as required by 29 U.S.C. § 216(b).

47. The individuals choosing to opt in, referred hereto to as the "Plaintiff Class", will be listed on subsequent pleadings and copies of their written consents to sue will be filed with the Court.

48. Plaintiff Patel contends that this action is appropriate for collective action status because each named Defendant herein has acted in the same manner with regard to all members of the Plaintiff Class.

V.
FACTS

49. At all times relevant to this action, Defendants have been subject to the requirements of the FLSA.

50. For purposes of this action, the "relevant period" is defined as such period commencing on the date that is three years prior to the filing of this action, and continuing thereafter.

51. The Defendants employed Mr. Patel at one of Defendants' retail liquor stores located at 2814 N. Main Street, Suite 300, Baytown, Texas 77521 from November 24, 2010 until July 30, 2011.

52. During his employment, Plaintiff worked for the Defendants as a store clerk ("clerk"), and was in exchange promised payment of a fixed wage of $3,000.00 per month.

53. As a clerk, Plaintiff has performed, during a significant period of most days, what

was or is otherwise work performed by "hourly" or non-exempt employees because the job required it and Defendants' management required it.

54. In particular, as a clerk, Plaintiff sold alcohol to Defendants' retail clients, processed and rang such sales, collected money for the sales, and stocked inventory in Defendants' liquor store.

55. During Plaintiff's employment, while working for the Defendants as clerk, Plaintiff was required to work overtime hours in excess of 40 hours worked during each seven-day workweek.

56. Further, during these hours worked, Plaintiff has performed the function of his job, which included the performance of duties typically performed by "hourly" paid non-exempt employees because the job required it and the Defendants' management required it.

57. Plaintiff averaged well over 40 hours per week during his employment with the Defendants.

58. Typically, Plaintiff worked from 10:00 a.m. until 9:00 p.m. daily from Monday through Saturday of each work-week.

59. Plaintiff was not allowed to take any lunch or other breaks, and was expected to eat while he continued to work on his shift.

60. Similarly, during at least the past three years, all of the clerks employed at all business locations owned and/or operated by the Defendants were routinely required to work in excess of 40 hours per week to perform the function of their job which included the performance of duties otherwise typically performed by "hourly" paid non-exempt employees because the job required it and Defendants' management required it.

61. Defendants required Plaintiff and all others similarly situated to perform all

necessary work to include the performance of those duties otherwise typically performed by "hourly" employees which routinely required Plaintiff and other similarly situated employees to work "overtime" hours as defined by 29 U.S.C. § 201 *et seq*., for which they were not paid for.

62. During his employment with the Defendants, Plaintiff Patel was coerced into loaning the Defendants $19,000.00, a significant sum that Plaintiff had laboriously saved over a period of time.

63. Defendants also failed to pay Plaintiff's wages in the amount of $6,000.00, which represent the straight-time wages earned during the last two months of Mr. Patel's employment.

64. Defendants now refuse to pay Mr. Patel these amounts totaling $25,000.00 (which amounts do not include Mr. Patel's unpaid overtime wages), despite signing an agreement on July 17, 2011, promising to pay $25,000.00 on July 30, 2011 (Plaintiff attaches as **Exhibit A** the agreement of the parties signed by Messrs. Patel and Momin).

65. Plaintiff thus sues for his unpaid overtime wages, and for the additional $25,000.00 he is owed by the Defendants.

VI.
FIRST CLAIM FOR RELIEF
(Unpaid overtime compensation under the FLSA)

66. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.

67. Plaintiff Patel and all others similarly situated are considered non-exempt employees.

68. Plaintiff Patel and all others similarly situated are entitled to receive overtime pay for all hours they have worked in excess of 40 during each seven-day workweek.

69. During Plaintiff Patel's employment, he routinely worked more than 40 hours per

week.

70. Defendants did not pay Plaintiff overtime for the hours he worked on a weekly basis that were in excess of 40 hours.

71. Defendants have also failed to pay, and continue not to pay, the overtime wages owed to all other similarly situated employees since the beginning of the three-year period preceding the filing of this civil action.

72. As such, Defendants have violated 29 U.S.C. § 201 *et seq*. by failing to pay the Plaintiff and all other similarly situated employees "overtime" pay for all hours worked in excess of 40 hours per week.

73. Defendants knowingly, willfully, and with reckless disregard carried out their illegal pattern and practice regarding overtime compensation due to Plaintiff and to all others similarly situated.

74. Plaintiff and all others similarly situated seek an amount of back-pay equal to the unpaid overtime compensation from the date they commenced employment for the Defendants until the date of trial.

75. Plaintiff and all others similarly situated further seek an additional equal amount as liquidated damages, as well as reasonable attorney's fees and costs as provided for by 29 U.S.C. § 216(b), along with post-judgment interest at the highest rate allowed by law.

76. Defendants do not possess time records indicating the number of hours worked by Plaintiff and by other similarly situated employees.

SECOND CLAIM FOR RELIEF
(Failure to pay wages in violation of the Texas Payday Act)

77. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.

78. Defendants, as Plaintiff's employer, are obligated under the Texas Payday Act to pay Plaintiff and all other similarly situated employees, for all hours worked (TEX. LABOR CODE § 61, *et seq.*)

THIRD CLAIM FOR RELIEF
(Breach of Contract)

79. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.

80. Defendants have breached the agreement of the parties (attached hereto as **Exhibit – A)** by failing to pay $25,000.00 to Mr. Patel as promised, for which he now sues.

FOURTH CLAIM FOR RELIEF
(Request for Preliminary Injunction – Spoliation of Evidence)

81. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.

82. Plaintiff and members of the Plaintiff Class will suffer irreparable harm if Defendants are not enjoined from this moment and during the pendency of this lawsuit from destroying any records that are in any way related to the matters asserted herein, including any correspondence between Defendants, Plaintiff, and / or members of the Plaintiff Class, and any records required to be maintained by the FLSA and the Texas Payday Act.

83. There is substantial likelihood that Plaintiff and members of the Plaintiff Class will prevail at the trial of this matter.

84. The harm that will result is irreparable because Plaintiff and members of the Plaintiff Class will not be able to replicate the destroyed evidence.

85. Plaintiffs will not have any adequate remedy at law if Defendants destroy records pertaining to their employment, and thus they seek the Court to place each Defendant on notice

regarding the spoliation of such evidence.

VII.
COLLECTIVE ACTION ALLEGATIONS

86. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.

87. Other employees have been victimized by Defendants' ill-conceived patterns, practices, and policies that violate of the FLSA. As such, other similarly situated employees are being denied their lawful wages.

88. Accordingly, each Defendant's pattern and practice of failing to pay the overtime wages (at time and one-half) of clerks and other non-exempt employees as required by the FLSA results from Defendants' general application of policies and practices, and does not stem from the personal circumstances of the members of the Plaintiff Class.

89. Plaintiff Patel's experience is typical of the experience of the members of the Plaintiff Class as it pertains to compensation.

90. The specific job titles or job requirements of the various members of the Plaintiff Class do not prevent collective treatment.

91. All clerks and non-exempt employees of the Defendants, regardless of their job requirements or rates of pay, who are denied overtime compensation for hours worked in excess of 40 per week, are similarly situated.

92. Furthermore, although the amounts of damages may vary among individual employees, there is no detraction from the common nucleus of liability facts.

93. All current and former clerks and non-exempt employees employed by Defendants' businesses, who at any time during the three years prior to the date of filing of this action to the date of judgment were denied overtime pay for hours worked in excess of forty (40)

in any given workweek may properly be included as members of the Plaintiff Class.

VIII.
ATTORNEYS' FEES AND COSTS

94. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.

95. Plaintiff Patel, and all others similarly situated, are entitled to recover their attorneys' fees and costs for bringing this action pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq*.

IX.
JURY DEMAND

96. Plaintiff Patel, and all others similarly situated, make a formal demand for a jury trial in this matter.

X.
PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff AAYUB AHMED PATEL and all others similarly situated respectfully request that upon final hearing, the Court grant Plaintiff, and all others similarly situated, relief as follows:

a. Authorize the issuance of notice at the earliest possible time to all of Defendants' similarly situated employees who were employed during the three (3) years immediately preceding the filing of this lawsuit, informing them of their right to participate in this lawsuit should they so desire;

b. Declare that Defendants have violated the Fair Labor Standards Act, specifically 29 U.S.C. § 207, by failing to pay Plaintiff, and all others similarly situated, overtime pay at one and one half times their regular hourly rate for all hours in excess of 40 worked during each seven-day work period;

c. Declare that Defendants have violated the Fair Labor Standards Act, specifically 29 U.S.C. § 207, by failing to pay Plaintiff, and all others similarly situated, straight-time pay for all hours in excess of 40 worked during each seven-day work period;

d. Enjoin Defendants from failing to pay Plaintiff, and all others similarly situated, at one and one half times their regular hourly rates for all hours in excess of 40 worked in each seven-day work period;

e. Order the Defendants to pay Plaintiff his non-overtime wages during the last two months of his employment as agreed to in writing;

f. Declare that Defendants' violations of the FLSA are willful;

g. Order Defendants to pay Plaintiff, and all others similarly situated, the difference between what they should have paid for overtime hours plaintiffs worked during the relevant period and what they were actually paid, together with an equal amount as liquidated damages;

h. Enter an injunction restraining Defendants from destroying any payroll or other relevant records;

i. Order Defendants to pay Plaintiff and all others similarly situated employees' reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 216(b);

j. Order Defendants to pay post-judgment interest at the highest lawful rate for all amounts, including attorney fees, awarded against the Defendants; and,

k. Order all further relief, whether legal, equitable or injunctive, as may be necessitated to effectuate full relief to Plaintiff Aayub Ahmed Patel, and to all other similarly situated employees of Defendants who chose to opt in and become members of the Plaintiff Class.

Respectfully submitted,

ALI S. AHMED, P.C.

By: /s/ Salar Ali Ahmed

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